IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.99 OF 2007

Jagannath Arjun Kalrao ...Petitioner

vs.

Shakuntala Govind Sakpal & Anr. ...Respondents

Mr.G.S.Godbole for the Petitioner
Mr.Shastri for the Respondents.

CORAM: A.S.OKA,J.
DATE : JUNE 5, 2007.

P.C.:

1. Heard learned Counsel for the Revision Applicant. Revision applicant is a Defendant-tenant in respect of the three rooms totally admeasuring 300 sq.ft. situated at Lonavala, District Pune. The Respondents filed a suit for possession against the Revision Applicant on various grounds. The main ground is a bonafide requirement. The Trial Court framed various issues. The trial court recorded a finding that bonafide requirement of the first Respondent (original Plaintiff no.1) has been established. The Trial Court, however, recorded a finding on the issue of comparative hardship in favour of the Revision Applicant-tenant. In an Appeal preferred by the respondents, the Appellate Court has interfered and has passed a decree for possession. The Appellate court confirmed the finding on the issue of bonafide requirement and held that the issue of comparative hardship ought to have been decided in favour of the first respondent. The Appellate Court has also passed a decree on the ground of permanent construction.

2. The learned Counsel for the Petitioner pointed out that the first Respondent is happily staying in her own premises at Dombivali along with her son. He pointed out that there is no finding recorded by the Appellate Court that along with the first Respondent her family members desire to shift the suit premises at Lonavala. He also invited my attention to the finding of the Appellate Court that the evidence led by the Respondents as regards ailments suffered by the first Respondent was inconsistent. He submitted that the requirement is merely a fanciful requirement as it cannot be accepted that the first respondent whose age is 78 years intends to leave her son's family and wants stay alone at Lonavala in Pune District. He submitted that even the finding on the issue of comparative hardship is perverse in as much as the premises allegedly found in the name of the Revision Applicant are not located at Lonavala and the premises are located somewhere else. He submitted that the issue on the finding of permanent construction is perverse in as much as the relevant factors are not considered by the Appellate Court. He submitted that the impugned Judgment and Order is perverse.

3. I have considered the submissions. The evidence on record discloses that at present the first Respondent is occupying the tenement on the third floor of a building at Dombivali. The first Respondent is a widow. The second Respondent is her

married son. It is not in dispute that the present age of the first Respondent is 77 or 78 years. The suit premises are situated on the ground floor. It is the case of the first respondent that she finds extremely difficult to climb the staircase and therefore the present premises in her possession are very inconvenient to her. Therefore, she wants to spend rest of her life in the premises on the ground floor at Lonavala. The case of the Respondents is that as compared to the city of Dombivali in Thane District, the atmosphere of Lonavala is free from pollution. It is true that her son's family does not desire to shift at Lonavala along with the first Respondent. The fact remains that as of today, the 77 year old first Respondent widow is occupying a tenement on the third floor and her desire is to stay in her own premises situated on the ground floor at Lonavala for rest of her life. This requirement pleaded by the first Respondent has been accepted as genuine by both the Courts below. Apart from the well settled position of law that the landlord is the best judge of his own requirement, it is very difficult to find fault with the concurrent findings that the requirement pleaded is reasonable. The landlady who is staying in the premises at third floor at Dombivali, now wants to shift to her own premises on the ground floor. Considering her age, no fault can be found with the approach of the Courts below while holding that the requirement is bonafide. Merely because the family members of the first Respondent have not shown any desire to shift at Lonavala, it will not affect the genuiness

of the requirement as pleaded by the first Respondent.

4. So far as the issue of comparative hardship is concerned, a finding has been recorded on the basis of the certified copy of the assessment list maintained by the Cantonment board, Dehu Road, Pune that the Revision Applicant is holding a house at village Chincholi. A finding has been recorded by the Appellate Court that the Revision Applicant did not disclose that he was holding the said house. On the basis of admission of the Revision Applicant in the cross examination, the Appellate Court found that there are several constructions around the suit premises and the Revision Applicant has not made any enquiry regarding availability of other premises. Therefore, an inference has been drawn that the Revision Applicant-tenant has not made any effort to search another accommodation after receipt of the suit notice. Considering these aspects, it is very difficult to find fault with the finding recorded by the Appellate Court on the issue of comparative hardship. Therefore, decree for possession on the ground of bonafide requirement deserves to be confirmed. In view of this position, it is not necessary to consider the submissions made by the learned Counsel for the Revision Applicant on the finding of permanent construction.

5. Accordingly, Revision Application is rejected.

6. At this stage, the learned counsel for the Applicant prays

that the ad-interim relief granted by this Court may be continued for a reasonable time. The said prayer is opposed by the Advocate for the Respondent.

7. Considering the facts and circumstances of the case, ad-interim relief granted earlier on 10th April 2007 is extended till 17th August 2007 subject to condition that the Revision Applicant will not create any third party interests and will not part with possession in favour of any third party in respect of the suit premises.

JUDGE